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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/848,231	05/04/2001	Barry Appelman	06975-130001	6250
26171 7590 07/14/2009 FISH & RICHARDSON P.C. P.O. BOX 1022 MINNEAPOLIS, MN 55440-1022				
EXAMINER				
KE, PENG				
ART UNIT		PAPER NUMBER		
2174				
NOTIFICATION DATE		DELIVERY MODE		
07/14/2009		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte*: BARRY APPELMAN

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Application 09/848,231  
Technology Center 2100

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Mailed: July 13, 2009

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Before Deborah L. Perry, *Supervisory Paralegal Specialist, Review Team*  
Perry, *Supervisory Paralegal Specialist, Review Tea.*

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on July 14, 2008. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matter(s) requiring attention prior to docketing.

EXAMINER'S ANSWER

STATUS OF CLAIMS AND AMENDMENTS AFTER FINAL

A review of the file finds that the appendix headings Status of Claims and the Amendments After Final as provided in the Examiner's Answer

mailed June 5, 2006, under the heading “Status of Claims” and “Status of Amendments” is unclear and does not take into consideration Appellant’s § 1.116 amendment filed on March 6, 2006. See 37 CFR § 41.33

Our review of the file finds that Appellant filed a § 1.116 After Final (AF) Amendment concurrently with the Appeal Brief filed on March 6, 2006. It is noted that on the first page of the Brief, Appellant’s Status of Claim and Status of Amendments sections calls the Examiner’s attention to the fact that an amendment was filed cancelling claims 57-80. Appellant’s Reply Brief filed August 7, 2006, once again called the Examiner’s attention to the AF Amendment. Correction is required.

#### INFORMATION DISCLOSURE STATEMENT

Appellant filed an Information Disclosure Statement (IDS) on March 12, 2007, July 19, 2007, September 7, 2007; March 7, 2008; and March 14, 2008. There is no indication on the record that the Examiner has considered the above Information Disclosure Statements. MPEP § 609 requires the Examiner to consider any Information Disclosure Statement filed by Applicant if timely submitted. A written communication notifying Appellant of the Examiner’s consideration of the above Information Disclosure Statements is required.

CONCLUSION

Accordingly, it is

ORDERED that the application is returned to the Examiner:

- 1) vacate the Examiner's Answer mailed June 5, 2006;
- 2) issue a Substitute Examiner's Answer setting forth the correct status of the AF final amendment(s) and the Status of the Claims and to correct any other discrepancies in the Answer (i.e., eliminate the cancelled claims in the statement of the rejections) as may be required. The Examiner may correct the appendix headings on a PTOL-90; and
- 3) consider and/or acknowledge the Information Disclosure Statements noted above and to notify Appellants of such consideration and;
- 4) for such further action as may be appropriate

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

KZ/vsh

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